

IRR Programs under consortium contracts or agreements. For an explanation of self-determination contracts, refer to Title I, 25 U.S.C. 450f. For an explanation of self-governance agreements, see Title IV, 25 U.S.C. 450b(1) and 458b(b)(2).

(c) *Advance payments.* The Secretary and the tribe must negotiate a schedule of advance payments as part of the terms of a self-determination contract in accordance with 25 CFR 900.132.

(d) *Design and construction contracts.* The Secretary can enter into a design/construct IRR Program self-determination contract that includes both the design and construction of one or more IRR projects. The Secretary may make advance payments to a tribe:

(1) Under a self-determination design/construct contract for construction activities based on progress, need, and the payment schedule negotiated under 25 CFR 900.132; and

(2) Under a self-governance agreement in the form of annual or semi-annual installments as indicated in the agreement.

§ 170.612 How are non-contractible functions funded?

(a) All non-contractible IRR program functions are funded by IRR Program management and oversight funds.

(b) All non-contractible IRR project functions are funded by IRR Program construction funds.

§ 170.613 When does BIA determine the amount of funds needed for non-contractible non-project related functions?

Each fiscal year the Secretary will develop national and regional BIA IRR Program budgets. Within the first quarter of each fiscal year BIA will publish a copy of the national and regional IRR budgets.

§ 170.614 Can a tribe receive funds before BIA publishes the notice of funding availability?

A tribe can receive funds before BIA publishes the notice of funding availability required by § 170.600(a)(1) only if the tribe has a negotiated self-determination contract or self-governance agreement.

§ 170.615 Can a tribe receive advance payments for non-construction activities?

Yes. BIA must make advance payments to a tribe for non-construction activities under 25 U.S.C. 450l for self-determination contracts on a quarterly, semiannual, lump-sum, or other basis proposed by a tribe and authorized by law.

§ 170.616 How are advance payments made when additional IRR Program funds are made available after execution of the self-governance agreement?

When additional IRR Program funds are available, following the procedures in 25 CFR 1000.104, tribes can request to use the additional funds for IRR Program activities or projects and have an addendum to the agreement executed.

§ 170.617 May a tribe include a contingency in its proposal budget?

(a) A tribe with a self-determination contract may include a contingency amount in its proposed budget in accordance with 25 CFR 900.127(e)(8).

(b) A tribe with a self-governance agreement may include a project-specific line item for contingencies if the tribe does not include its full IRR Program funding allocation in the agreement.

(c) The amounts in both paragraphs (a) and (b) of this section must be within the RNDF allocation or within the negotiated ISDEAA contract or agreement.

§ 170.618 Can a tribe keep savings resulting from project administration?

When actual costs of the projects under contracts or agreements for construction projects are less than the estimated costs, the Secretary will determine the use of the excess funds after consultation with the tribe. (See 25 U.S.C. 450e-2.)

§ 170.619 Do tribal preference and Indian preference apply to IRR Program funding?

Tribal preference and Indian preference apply to IRR Program funding as shown in the following table:

§ 170.620

If . . .	Then . . .
(a) A contract serves a single tribe.	Section 7(c) under Title I of ISDEAA allows tribal employment or contract preference laws, including tribe local preference laws, to govern.
(b) A contract serves more than one tribe.	Section 7(b) under Title I of ISDEAA applies.
(c) A self-governance agreement exists under Title IV of ISDEAA.	25 CFR 1000.406 applies.

§ 170.620 How do ISDEAA's Indian preference provisions apply?

This section applies when the Secretary or a tribe enters into a cooperative agreement with a State or local government for an IRR construction project. The tribe and the parties may choose to incorporate the provisions of section 7(b) of ISDEAA in a cooperative agreement.

§ 170.621 What if a tribe fails to substantially perform work under a contract or agreement?

If a tribe fails to substantially perform work under a contract or agreement:

(a) For self-determination contracts, the Secretary must use the monitoring and enforcement procedures in 25 CFR 900.131(a)–(b) and ISDEAA, part 900 subpart L (appeals); and

(b) For self-governance agreements, the Secretary must use the monitoring and enforcement procedures in 25 CFR part 1000 subpart K.

§ 170.622 What IRR programs, functions, services, and activities are subject to the self-governance construction regulations?

All IRR Program design and construction projects and activities, whether included separately or under a program in the agreement, are subject to the regulations in 25 CFR 1000 subpart K, including applicable exceptions.

§ 170.623 How are IRR Program projects and activities included in a self-governance agreement?

To include an IRR Program project or activity in a self-governance agreement, the following information is required:

(a) A line item for each project or activity;

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(b) Sufficient detail to describe the work as included in the FHWA-approved IRR TIP and Control Schedule; and

(c) All other information required under 25 CFR 1000 subpart K.

§ 170.624 Is technical assistance available?

Yes. Technical assistance is available from BIA for tribes with questions about contracting the IRR Program or IRR projects. For tribes with questions about self-governance agreements for the IRR Program or IRR project(s), technical assistance is available from the Office of Self-Governance and BIA. Technical assistance can include, but is not limited to, assistance in the preparation of self-determination contract proposal(s) and self-governance agreements.

§ 170.625 What regulations apply to waivers?

The following regulations apply to waivers:

(a) For self-determination contracts, 25 CFR 900.140–148;

(b) For self-governance agreements, 25 CFR 1000.220–232; and

(c) For direct service, 25 CFR 1.2.

§ 170.626 How does a tribe request a waiver of a Department of Transportation regulation?

A tribe must follow the procedures in ISDEAA, Title I, and 25 CFR 900.140–148 for self-determination contracts and Title IV, 25 CFR 1000.220–232 for tribal self-governance agreements. A courtesy copy of the request should be sent to the Secretary of Transportation at: 400 7th St., SW., HFL–1, Washington, DC 20590. When a waiver request is outside the Secretary's authority, the Secretary should forward the request to the Secretary of Transportation.

APPENDIX A TO SUBPART E—IRR PROGRAM FUNCTIONS THAT ARE NOT OTHERWISE CONTRACTIBLE

The program functions listed in this appendix cannot be included in a self-determination contract or self-governance agreement. (23 U.S.C. 202(d)(3)(B))

A. IRR project-related pre-contracting activities:

1. Notifying tribes of available funding including the right of first refusal; and